

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 7628

Joint Petition of Green Mountain Power Corporation,)
Vermont Electric Cooperative, Inc., and Vermont Electric)
Power Company, Inc. for a certificate of public good,)
pursuant to 30 V.S.A. Section 248, to construct up to a)
63 MW wind electric generation facility and associated)
facilities on Lowell Mountain in Lowell, Vermont, and)
the installation or upgrade of approximately 16.9 miles of)
transmission line and associated substations in Lowell,)
Westfield and Jay, Vermont)

Order entered: 1/13/2011

AMENDED SECOND PROTECTIVE ORDER REGARDING PREFILED TESTIMONY

I. INTRODUCTION

On May 21, 2010, Green Mountain Power Corporation ("GMP") filed a Motion for Confidential Treatment of Prefiled Evidence concerning certain prefiled testimony and related exhibits of GMP witness Douglas Smith. The Public Service Board ("Board") granted GMP's motion by Order dated August 5, 2010. On November 22, 2010, GMP filed a Motion to Amend the Board's Protective Order Regarding Prefiled Testimony along with a supporting averment. Among other things, GMP's motion to amend sought confidential treatment of Exhibit Pet.-DCS-4 (Revised) to the prefiled rebuttal testimony of GMP witness Douglas Smith. On December 22, 2010, the Board issued a Second Protective Order Regarding Prefiled Testimony¹ that granted GMP's request for confidential treatment of five exhibits to the prefiled rebuttal testimony of

1. While GMP styled its request as a motion to amend the August 5, 2010, Protective Order, we issued a second, separate Protective Order addressing only the six exhibits described in GMP's November 22nd motion. Three of the six exhibits addressed by that motion were revised versions of exhibits that were granted confidential treatment by the August 5, 2010, Protective Order. If we were to simply amend the August 5, 2010, Protective Order utilizing the amended draft Attachment to Protective Order submitted by GMP, the revised exhibits covered by the December 22, 2010, Order would have been afforded confidential treatment, while their original versions would have lost the protection afforded them by the August 5, 2010, Order. Accordingly, we directed GMP to file a statement as to whether it intended the original versions of its exhibits Pet.-DCS-5, 6 and 10 to become public documents, and if not an explanation for why they should continue to receive confidential treatment pursuant to the August 5, 2010, Order.

witness Smith, but denied its request for confidential treatment of Exh. Pet.-DCS-4 (Revised) because GMP had failed to provide a proper basis for the requested confidential treatment for that exhibit. However, because we recognized that the information contained in the exhibit might be commercially sensitive, we granted GMP leave to file supplemental information in support of its request.

On December 29, 2010, GMP submitted a second revised version of its previously submitted Averment No. 1 ("revised averment") to support its request for confidential treatment of Exh. Pet.-DCS-4 (Revised). Additionally, GMP also incorporated into the materials covered by the revised averment the original versions of exhibits Pet.-DCS-5, 6 and 10 in support of its request that they continue to receive confidential treatment.

No other party opposed GMP's motion or filed comments in response to the revised averment.

II. DISCUSSION

To promote full public understanding of the basis for its decisions, this Board has actively taken steps to limit the amount of information subject to protective orders. We have encouraged parties to remove material from that protection to the extent possible. Since 2001, we have required petitioners seeking a protective order to submit a document-specific (or information-specific) averment of the basis for keeping confidential any document (or information) that they wish to be kept under seal. This arrangement appropriately places a heavy burden on the party seeking confidentiality to justify that decision. It also ensures that counsel for the party seeking confidentiality has actually reviewed and considered the relevant confidentiality factors, as they relate to the specific document or information at issue.² Generally, we only resolve disputes about information when there is a genuine disagreement about its confidential nature.³ However, even when the motion is uncontested the Board will review the motion and supporting averment

2. *Investigation into General Order No. 45 Notice filed by Vermont Yankee Nuclear Power Corporation re: proposed sale of Vermont Yankee Nuclear Power Station to Entergy Nuclear Vermont Yankee, LLC*, Docket No. 6545 ("*Entergy Docket*"), Order of 11/9/01 at 5-6.

3. *Id.* at 6.

or averments to ensure that the moving party has presented a *prima facie* case for keeping the document or information under seal.

In determining whether to protect confidential information, we consider three issues:

- (1) Is the matter sought to be protected a trade secret or other confidential research, development, or commercial information which should be protected?
- (2) Would disclosure of such information cause a cognizable harm sufficient to warrant a protective order?
- (3) Has the party seeking protection shown "good cause" for invoking the Board's protection?⁴

GMP asserts that Exh. Pet.-DCS-4 (Revised) should be kept confidential for the following reasons:

- The exhibit contains information regarding historical forward market prices and is used by GMP to understand the regional energy market to support its effectiveness in forecasting, budgeting and risk management, especially with respect to power supply solicitations;
- The information was provided to GMP by a third party at no cost, but with the understanding that it would be kept confidential. Release of the information would jeopardize GMP's ability to obtain such information in the future and would negatively impact its effectiveness in such forecasting, budgeting and risk management, especially with respect to power supply solicitations;
- While GMP could obtain comparable third party historical forward market price information from public sources, it would need to access and record the information on a daily basis.

We have reviewed the revised averment, and we have applied the existing standard, and conclude that GMP has made a *prima facie* showing that the information in Exh. Pet.-DCS-4 (Revised) is commercially sensitive information that should be protected, that disclosure would cause a cognizable harm sufficient to warrant a protective order, and that there is good cause for protecting that information. Therefore, we amend our December 22, 2010, Protective Order to include within its scope Exh. Pet.-DCS-4 (Revised). Additionally, our August 5, 2010, Order remains in effect so that the original versions of exhibits Pet.-DCS-5, 6 and 10 will continue to be subject to the protections afforded by that Order.

4. See e.g., *Entergy Docket*, Order of 3/29/02 at 2.

We have consistently reminded parties who seek confidential treatment for materials that they have a continuing obligation to reexamine protected information and to release material that would not cause competitive harm, or that has otherwise been made public (even during the course of this proceeding), particularly testimony and exhibits. We expect GMP to do the same here. At this time, we are not explicitly ruling that any specific information should remain confidential indefinitely. Parties and other persons retain the ability to challenge whether information encompassed by this ruling should be removed from the special protections we adopt in this Order or removed completely from protection as confidential information.

III. ORDER

Therefore, IT IS HEREBY ORDERED that the Confidential Information provided by GMP (as set out in an attachment to this Order) shall be treated in this proceeding as follows:

1. All testimony, affidavits, transcripts, exhibits, and other documents that are subject to this Order as confidential information, and any documents that discuss or reveal documents that constitute confidential material, shall be placed in a sealed record by filing such information in sealed envelopes or other appropriate sealed containers on which shall be endorsed the caption and docket number of the proceeding, the nature of the content (*e.g.*, exhibit, report, etc.), and a statement that it shall not be opened or released from the custody of the Clerk of the Board except by Order of the Board. Notwithstanding such a statement, the members of the Board, any employee or consultant specifically authorized by the Board to assist the Board in this proceeding, and any Hearing Officer appointed to this Docket may have access to such sealed confidential information, but shall not disclose such information to any person.

2. At any hearing or conference in this proceeding, no persons, other than those who have signed or agreed to be bound by this Order and any Protective Agreement approved in this Docket, and those whom the Board has expressly authorized to have access to this confidential information, shall be permitted to give, hear or review testimony given or held with respect to this confidential information.

3. Each Board stenographer or reporter in this proceeding shall acknowledge and be bound by this Order. Each such Board stenographer or reporter shall be instructed to and shall start a separate transcription for testimony or discussion on the record of confidential information. Such transcription shall be marked "Confidential" and shall be sealed and filed with

the Clerk of the Board, and copies of the same shall be made available only to those persons authorized to view such information. Such transcription shall, in all other respects, be treated as confidential information pursuant to this Order.

4. The Board retains jurisdiction to make such amendment, modifications and additions to this Order as it may, from time to time, deem appropriate, including any such amendments, modifications or additions resulting from a motion made pursuant to the Protective Agreement. Any party or other person may apply to the Board for an amendment, modification or addition of this Order.

Dated at Montpelier, Vermont, this 13th day of January, 2011.

<u>s/ James Volz</u>)	
)	PUBLIC SERVICE
)	
<u>s/ David C. Coen</u>)	BOARD
)	
)	OF VERMONT
<u>s/ John D. Burke</u>)	

OFFICE OF THE CLERK

FILED: January 13, 2011

ATTEST: s/ Susan M. Hudson
Clerk of the Board

NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: psb.clerk@state.vt.us)

Docket 7628
Attachment to
1/13/11
Protective Order

Witness	Page, Line No. or Exhibit No.	Subject/Description	Averment
Douglas Smith	Exh. Pet.-DCS-5-CONFIDENTIAL (Revised)	Market Price Outlook (2010\$)	No. 1 (Revised)
Douglas Smith	Exh. Pet.-DCS-6-CONFIDENTIAL (Revised)	Market Price Outlook (nominal \$)	No. 1 (Revised)
Douglas Smith	Exh. Pet.-DCS-10-CONFIDENTIAL (Revised)	KCW Cost v. GMP Market Outlook	No. 1 (Revised)
Douglas Smith	Exh. Pet.-DCS-11-CONFIDENTIAL	Henry Hub Gas Price Outlooks	No. 1 (Revised)
Douglas Smith	Exh. Pet.-DCS-12-CONFIDENTIAL	Premium REC Price Outlook	No. 1 (Revised)
Douglas Smith	Exh. Pet.-DCS-4-CONFIDENTIAL (Revised)	Historical Forward Market Price Information	No. 1 (2 nd Revised)